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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/633,122 | 08/04/2000 | Theodore Rappaport | 02560034aa | 1149 |

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EXAMINER

SHARON, AYAL I

ART UNIT PAPER NUMBER

2123

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/633,122

Applicant(s)

RAPPAPORT ET AL.

Examiner

Ayal I. Sharon

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

PD

DETAILED ACTION

Introduction

1. Claims 1-6, 8-12, and 14-15 of U.S. Application 09/633,122, originally filed on 08/04/2000, are presented for examination. In the amendment filed on 5/16/05, Applicants have cancelled claims 7 and 13. All of the remaining claims have been amended.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of U.S. Patent No. 6,625,454. Although the conflicting claims are not identical, they are not patentably distinct from each other.

- a. Examiner finds that the following limitation in claim 1 of the instant application 1:

Claim 1. A method for designing or deploying a communications network, comprising the steps of:

Corresponds to the following limitation in claim 1 of the issued patent:

Claim 1. A method for designing or deploying a communications network, comprising the steps of:

- b. Moreover, Examiner finds that the following limitation in claim 1 of the instant application 1:

providing a computerized model which represents a physical environment in which a communications network is or will be installed;

Corresponds to the following limitation in claim 1 of the issued patent:

providing a computerized model which represents a physical environment in which a communications network is or will be installed, said computerized model providing a display of at least a portion of said physical environment;

- c. Moreover, Examiner finds that the following limitation in claim 1 of the instant application 1:

identifying a plurality of system components which may be used in said physical environment as at least a part of said communications network, some or all of said system components having one or more electrical characteristics or frequency specific information;

Corresponds to the following limitation in claim 1 of the issued patent:

providing performance attributes for a plurality of system components which may be used in said physical environment, a number of said system components having associated with them frequency dependent characteristics;

- d. Moreover, Examiner finds that the following limitation in claim 1 of the instant application 1:

identifying at least one component kit composed of at least two system components of said plurality of system components, wherein interconnectivity of said at least two system components without a fault is assured;

Corresponds to the following limitation in claim 1 of the issued patent:

selecting specific components from said plurality of system components for use in said computerized model;

In combination with the limitations of claim 9 of the issued patent:

Claim 9. The method of claim 1 further comprising the step of identifying errors in physical media connections for two or more specific components selected in said selecting step.

Examiner finds that the "selected specific components" in the issued patent correspond to the "identified component kit" in the instant application.

- e. Moreover, Examiner finds that the following limitations in claim 1 of the instant application 1:

determining, using said computerized model, at least one performance characteristic for said at least a part of said communications network which includes said at least one component kit; and

representing said at least one component kit in said at least a part of said communications network together with a representation of at least a portion of said physical environment.

Corresponds to the following limitation in claim 1 of the issued patent:

representing said selected specific components in said display;

running prediction models using the computerized model and said performance attributes to predict performance characteristics of a communications network comprised of said selected specific components, said prediction models utilizing said frequency dependent characteristics in calculations which predict said performance characteristics of said communications network.

4. Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,625,454. Claim 10 in the instant application is an apparatus claim that is analogous to method claim 1 in the instant application. Claim 14 of the issued patent is an apparatus claim that is analogous to the method claim 9 of the issued patent. Although the conflicting claims are not identical, they are not patentably distinct from each other for the same reasons that the method claim 1 in the instant application and the method claim 9 in the issued patent have been rejected in the preceding paragraph.
5. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/606,115, now published as U.S. PG-PUB 2004/0038683. Although the conflicting claims are not identical, they are not patentably distinct from each other because they address the same subject matter. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.
6. All dependent claims inherit these defects.

Response to Arguments

7. All previous prior art rejections have been withdrawn, as necessitated by the amendments to the claims. The arguments regarding those rejections are moot.

Conclusion

8. The articles by Skidmore et al. do not qualify as prior art due to their dates. They have been cited on the PTO-892 form because they include the following statement (see the 2003 version of the article, p.2):

While the field of in-building wireless design is not new, and many corporate and academic programs have developed software tools for indoor and campus network deployment (e.g., WISE [3], Cindoor, EDX, WaveCall), S⁴W and SitePlanner are the first software environments to systematize important facets of wireless network modeling and design. They abstract the creation and testing of wireless networks using software model libraries, help fuse measurements and simulation results, and provide facilities for automatically improving future performance by analyzing archived data from past scenarios (e.g., via data mining methodology and global optimization).

9. Examiner notes that the U.S. PG-PUB 2004/0133415 of co-pending application 10/697,557 contains an error in the "Related U.S. Application Data" section. That application is related to the instant application, and not to application 09/633,133 (which is printed on the PG-PUB document). Applicants are requested to make the appropriate changes in the co-pending application.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ayal I. Sharon whose telephone number is (571) 272-3714. The examiner can normally be reached on Monday through Thursday, and the first Friday of a biweek, 8:30 am – 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached at (571) 272-3749.

Any response to this office action should be faxed to (571) 273- 8300, or mailed to:

USPTO
P.O. Box 1450
Alexandria, VA 22313-1450

or hand carried to:

Art Unit: 2123


USPTO
Customer Service Window
Randolph Building
Dulany Street
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center 2100 Receptionist, whose telephone number is (571) 272-2100.

Ayal I. Sharon

Art Unit 2123

July 20, 2005


Paul L. Rodriguez 7/21/05
Primary Examiner
Art Unit 2125